



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,949	10/19/2005	Ian James Prismall	ARD121USA	9420
24339	7590	04/30/2009		
JOEL D. SKINNER, JR. SKINNER AND ASSOCIATES 212 COMMERCIAL ST. HUDSON, WI 54016			EXAMINER MACARTHUR, VICTOR L	
			ART UNIT	PAPER NUMBER
			3679	
			MAIL DATE	DELIVERY MODE
			04/30/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,949	<b>Applicant(s)</b> PRISMALL, IAN JAMES	
	<b>Examiner</b> VICTOR MACARTHUR	<b>Art Unit</b> 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 12-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 12-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/20/2009 has been entered.

### ***Claim Objections***

Claim 13 is objected to because of the following informalities:

- The term “the post” (line 1 of claim 13) lacks proper antecedent basis. Does the applicant mean to refer to the previously set forth "post arrangement"?

Appropriate correction is required. For purposes of examining the instant invention, the examiner has assumed these corrections have been made.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 6, 8 and 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Mullenberg (U.S. Patent 5,639,176).

Art Unit: 3679

Claim 1. Mullenberg discloses (fig.1) a method of securing a tube (21) to another component (18), the method comprising providing the said another component with an opening (opening within 18), passage or recess having a region of generally tapering form (tapered inner region of 18) with a predetermined cone angle, introducing the tube into the opening, passage or recess, positioning a clamping member (11) within the tube, the clamping member having a generally frustoconical form (tapered outer form of 11) with a predetermined cone angle which is approximately the same as the opening, passage or recess cone angle, and securing (securing with 5) the clamping member to the said another component to clamp the tube between the clamping member and the said another component.

Claim 3. Mullenberg discloses a method according to claim 1, wherein the tube is of a ductile material (i.e., metal as designated by cross-hatching).

Claim 5. Mullenberg discloses a method according to claim 1, wherein the tube is shaped to include an end region (left end of 21) of tapering form prior to the introduction of the tube into the opening, passage or recess.

Claim 6. Mullenberg discloses a method according to claim 1, wherein the action of introducing deforms (col.1, ll.54-60) part of the tube to conform generally, with the tapering shape of the opening, passage or recess.

Claim 8. Mullenberg discloses (fig.1) a post arrangement comprising a tube (21), an end of which extends into an opening (opening within 18), passage or recess provided in a base (18), the opening, passage or recess being of generally tapering form (tapered form of opening within 18) with a predetermined cone angle, a clamping member (11) being located at least partly within the tube, the clamping member having a generally frustoconical form with a

Art Unit: 3679

predetermined cone angle which is approximately the same as the opening, passage or recess cone angle, the clamping member being secured to the base to clamp the tube between the clamping member and the base.

Claim 12. Mullenberg discloses a post arrangement according to claim 8, wherein the clamping member is arranged to be secured to the base by means of a screw-threaded coupling (via. 5 and 24).

Claim 13. Mullenberg discloses a post arrangement according to claim 8, wherein the post is **arranged to carry** (but does not necessarily carry) part of a queue management system. Note that the post is arranged within element 1 such that it is capable of structurally carrying any number of management systems including queue management systems. Note that the term “queue” is taken to mean arranged in a line in accordance with Merriam-Webster’s Collegiate Dictionary Tenth Edition.

Claim 14. Mullenberg discloses (fig.1) a post arrangement comprising a tube (21), an end of which extends into an opening (opening within 18), passage or recess provided in a housing (18) forming part of a queue management system (line of elements shown in fig.1), the opening, passage or recess being of generally tapering form with a predetermined cone angle, a clamping member (11) being located within the tube, the clamping member having a generally frustoconical form with a predetermined cone angle which is approximately the same as the opening, passage or recess cone angle, the clamping member being secured to the housing to clamp the tube between the clamping member and the housing. Note that the term “queue” is taken to mean arranged in a line in accordance with Merriam-Webster’s Collegiate Dictionary Tenth Edition.

Art Unit: 3679

Claim 15. Mullenberg discloses a connection arrangement comprising a first component (21) of tubular form, a second component (18) having an opening (tapered opening in 18), passage or recess of tapering form formed therein with a predetermined cone angle, and a clamping member (11) having a generally frustoconical form with a predetermined cone angle which is approximately the same as the opening, passage or recess cone angle, a part of the first component being located within the opening, passage or recess of the second component, the clamping member being located at least partly within the first component and secured (via 5) to the second component to clamp the first component between the second component and the clamping member.

Claim 16. Mullenberg discloses a connection arrangement according to claim 8 wherein the tube has a tube wall of uniform thickness (axial thickness of 21 as measured between left side of 21 to right side of 21).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mullenberg (U.S. Patent 5,639,176).

Claim 4. Mullenberg discloses a method according to claim 1, wherein the tube is of a metal material (rather than a plastics material as claimed). One of ordinary skill in the art would

Art Unit: 3679

expect plastic to be preferable over metal for the purpose of reducing weight since plastic is lighter than metal. It has generally been recognized that selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Furthermore, the applicant has failed to demonstrate criticality by any showing of unexpected result derived from a plastic material over a metal material. Wherein a specific limitation has no criticality, case law can be relied upon as the sole rationale in an obviousness rejection. See MPEP 2144.04. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the Mullenberg invention to use plastic rather than metal for the benefit of reducing weight, and further since the limitation has no criticality and has thus been established by the case law cited above to be an obvious design consideration within the skill of the art. “[T]he results of ordinary innovation are not the subject of exclusive rights under the patent laws. Were it otherwise patents might stifle, rather than promote, the progress of useful arts. See U.S. Const., Art. I, section 8, cl.8.” In re KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007).

Claim 7. Mullenberg discloses a method according to claim 1, wherein the other component is provided with a single, centrally disposed (in that 24 is centrally disposed about 5) screw-threaded passage (24) extending from the lower surface thereof, a screw-threaded bolt (5) being used to secure the clamping member to the said another component, the screw-threaded bolt extending through a single, centrally disposed (in that 25 is centrally disposed about 5) opening (25) formed in the said clamping member and into the screw-threaded passage. Mullenberg does not expressly state that the position of the screw-threaded passage and opening should be reversed. However, the reversal of components in a prior art reference is a design

Art Unit: 3679

consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). Furthermore, the applicant has failed to demonstrate criticality by any showing of unexpected result derived from any specific hole/passage location. To the contrary, the applicant's disclosure implies that the hole/passage location is not critical (see applicant's figures 2 and 3 which show reversal of hole/passage location). Wherein a specific limitation has no criticality, case law can be relied upon as the sole rationale in an obviousness rejection. See MPEP 2144.04. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to reverse the Mullenberg hole/passage location since the limitation has no criticality and has thus been established by the case law cited above to be an obvious design consideration within the skill of the art. "[T]he results of ordinary innovation are not the subject of exclusive rights under the patent laws. Were it otherwise patents might stifle, rather than promote, the progress of useful arts. See U.S. Const., Art. I, section 8, cl.8." In re KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007).

Claim 9. Mullenberg discloses a method according to claim 8, wherein the tube is of a metal material (rather than a plastics material as claimed). One of ordinary skill in the art would expect plastic to be preferable over metal for the purpose of reducing weight. It has generally been recognized that selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Furthermore, the applicant has failed to demonstrate criticality by any showing of unexpected result derived from a plastic material over a metal material. Wherein a specific limitation has no criticality, case law can be relied upon as the sole rationale in an obviousness



Art Unit: 3679

rejection. See MPEP 2144.04. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the Mullenberg invention to use plastic rather than metal for the benefit of reducing weight, and further since the limitation has no criticality and has thus been established by the case law cited above to be an obvious design consideration within the skill of the art. “[T]he results of ordinary innovation are not the subject of exclusive rights under the patent laws. Were it otherwise patents might stifle, rather than promote, the progress of useful arts. See U.S. Const., Art. I, section 8, cl.8.” In re KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007).

### ***Response to Arguments***

Applicant's arguments with regard to the claim rejections have been fully considered but they are not persuasive.

The applicant argues that “Mullenberg does not disclose the feature of Claim 1 that the cone angle of the ‘another component’ and that of the clamping member are substantially the same”. This is not persuasive as follows:

- The phrase “substantially the same” is not recited in claim 1
- Mullenberg discloses (fig.1) what is actually recited in claim 1 to include a clamping member (11) having a generally frustoconical form (tapered outer form of 11) with a predetermined cone angle which is **approximately** (in that they vary within only a few degrees) the same as the opening (opening within 18).

The applicant argues that “Applicant’s process as claimed has utility in clamping or mounting tubes of substantially uniform wall thickness” and that “The Mullenberg device has the

Art Unit: 3679

disadvantage that it would not be capable of performing this important function". This is not persuasive as follows:

- The phrase "clamping or mounting tubes of substantially uniform wall thickness" is not recited in the claims.
- Applicant has failed to submit any evidence, much less evidence proving any lack of capability in the prior art.
- Furthermore the claim 16 limitation of "wherein the tube has a tube wall of uniform thickness" is met as detailed in the prior art rejections above.

The applicant argues that the limitation "and end" of the tube (or in the case of claim 15 "a part" of the first, tubular component) extends into the opening, passage or recess and that this limitation implies that another part of the tube is not so located. This is not persuasive as follows:

- The phrase "another part of the tube is not so located" is not recited in the claims.
- A positive recitation that a certain part of a first element is located within a second element does not amount to a negative limitation forbidding any other parts, or any other elements for that matter, from also being located within the second element.

The applicant argues that Mullen berg is incapable of serving as a post arrangement or connection arrangement as set out in the introductory parts of claims 8, 14 and 15. This is not persuasive as follows:

- Applicant's claims to not structurally require a post much less any specific connection thereto.

Art Unit: 3679

- The limitation “post arrangement” is taken to be a label for any arrangement that is in any way capable for use with a post. In fact, this recitation is so broad as to read on an arrangement that can merely be placed near a post. Applicant is reminded that where there is physical identity between the subject matter of the claim and the prior art, the label given to the claimed subject matter does not distinguish the invention over the prior art. In re Pearson, 494 F. 2d 1399, 1403, 181 USPQ 641, 644 (CCPA 1974); In re Lemin, 326 F. 2d 437, 140 USPQ 273 (CCPA 1964).

### ***Conclusion***

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

Art Unit: 3679

will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (571) 272-7085.

The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

April 30, 2009

/Victor MacArthur/  
Primary Examiner, Art Unit 3679